



PM-10 Exceptional Events

Request: Encourage the Environmental Protection Agency (EPA) to revise its rule, Treatment of Data Influenced by Exceptional Events, to improve implementation of the rule and recognize the unique characteristics of a desert environment or seek Congressional relief. The revised rule should be applied retroactively to ensure fairness and equity.

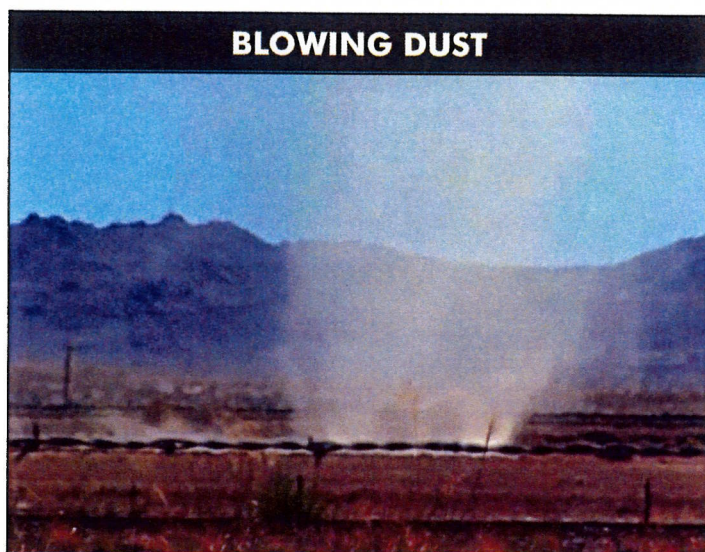
Regional Issue

Congress recognized that there are exceptional events such as high winds and wildfires that cannot be controlled by air quality plans. In 2005, Congress amended the Clean Air Act to allow for exceptional events so that regions would not be penalized for exceedances at the monitors. EPA then developed the Exceptional Events Rule. The Western States Air Resources Council (WESTAR), an association of 15 western state air quality managers, has identified several implementation issues with the rule. The EPA Administrators have acknowledged that the rule is flawed, but contend that EPA is forced to use it. Arizona and WESTAR have provided recommendations to improve the implementation of the rule. Correcting the rule is critical to ensure that areas do not face continual, reoccurring nonattainment due to exceptional events beyond their control.

In the Arizona desert, high winds from weather fronts and localized storm activity move over a smooth terrain where they pick up dry, fine, silty soils and generate blowing dust on regional and local scales. Local air quality monitors affected by windblown dust have recorded exceedances of the federal air quality standard for PM-10 particulate matter. Given the occurrence of windblown dust, Arizona cannot attain the PM-10 standard unless exceedances associated with high winds are excluded from consideration. High winds in the desert cannot be controlled by a PM-10 plan.

Background

- Using the flawed Exceptional Events Rule, EPA disapproved four 2008 high wind exceptional events in the Maricopa County PM-10 nonattainment area, despite voluminous scientific data submitted by the Arizona Department of Environmental Quality and MAG showing that high winds caused the exceedances.
- As a result of the disapproval of the four exceptional events, EPA has indicated that the region did not attain the PM-10 standard and has proposed partial disapproval of the MAG 2007 Five Percent Plan for PM-10.



High winds moving over smooth terrain can generate blowing dust on a local scale.

- If the proposed partial disapproval is finalized, a conformity freeze on the MAG Transportation Improvement Program and Regional Transportation Plan will occur in approximately 30 days; only projects in the first four years could proceed. The region could also face the Clean Air Act sanctions of tighter controls on major industries and the loss of \$ 1.7 billion in federal highway funds.

Benefits

A revised Exceptional Events Rule would protect the Maricopa area and other areas from being penalized under the Clean Air Act for exceedances caused by exceptional events that cannot be controlled by air quality plans.

Contact:

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For more information visit:
azmag.gov/Environmental/



Janice K. Brewer
Governor

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Henry R. Darwin
Acting Director

VIA: FEDERAL EXPRESS

January 25, 2011

Mr. Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region IX
Mail Code: ORA-1
75 Hawthorne Street
San Francisco, Ca 94105

RE: Withdrawal of the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County
Nonattainment Area

Dear Administrator Blumenfeld:

Despite our contention that the *MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* ("5% Plan") has been effective and is approvable, the Arizona Department of Environmental Quality (ADEQ) hereby withdraws the 5% Plan from any further action or consideration by the United State Environmental Protection Agency (EPA).

As noted in our October 20, 2011, joint comment letter, ADEQ, the Maricopa Association of Governments (MAG) and the Maricopa County Air Quality Department (MCAQD) maintain that the 5% Plan, along with other previous plans, have been effective in improving air quality throughout the region. As a direct result of the plans that have been submitted, the annual average concentration of PM₁₀ within the Phoenix area between 1990 and 2009 has declined approximately 25%. During this same time, Maricopa County experienced unprecedented growth, nearly doubling in population during that same time period. This is a testament to Arizona's commitment to cleaner air.

Although we maintain that the 5% Plan is approvable in its existing form, we recognize that there are always opportunities to build upon our existing plans. Despite withdrawal of the Plan from EPA's consideration, the air quality rules and statutes that are part of the 5% Plan remain in effect. This ensures that Arizona continues to benefit from cleaner air while ADEQ, MAG and MCAQD work with EPA to modify the plan before re-submitting for EPA's consideration and action. We look forward to a cooperative and collaborative effort to resolve these issues over the coming months so that EPA can fully approve an updated 5% Plan.

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Jared Blumenfeld
January 25, 2011
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If you have any questions, please contact Eric Massey, the Director of ADEQ's Air Quality Division, at (602) 771-2308.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Darwin', with a stylized flourish at the end.

Henry R. Darwin
Acting Director

cc: Deborah Jordan, U.S. EPA Region IX
Colleen McKaughan, U.S. EPA Region IX
William Wiley, Maricopa County Air Quality Department
Dennis Smith, Maricopa Association of Governments
Don Gabrielson, Pinal County Air Quality Control District

FOR IMMEDIATE RELEASE**CONTACT:** Kelly Taft
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EPA Approves New Dust Factors State Withdraws Plan to Incorporate Information

PHOENIX (January 25, 2011) – The Maricopa Association of Governments (MAG) is supporting a decision announced today by the Arizona Department of Environmental Quality (ADEQ) to voluntarily withdraw a dust control plan known as the MAG Five Percent Plan for PM-10. The move allows for the use of new paved road dust factors provided by the Environmental Protection Agency (EPA) to improve the plan.

“We want to assure the public that the stringent measures contained in the plan will continue to be implemented and public health will not be affected by the plan’s withdrawal,” said MAG Chair Thomas Schoaf, mayor of Litchfield Park. “In fact, under this plan, we have had no violations of the coarse particulate standard at the monitors at all in 2010,” he said.

The MAG Five Percent Plan for PM-10 (particulate matter 10 microns in diameter or less) was submitted to the EPA in 2007. The new dust factor is more accurate and addresses concerns that have prevented the plan’s approval. The plan was facing a partial disapproval action by the EPA.

“With the new information provided by the EPA, MAG can proceed with the revisions that are necessary for the plan. We will work as diligently as possible to improve the plan for the residents of this region,” said MAG Chair Thomas Schoaf, mayor of Litchfield Park.

The new dust factors will also be used in testing transportation projects to ensure they do not contribute to air quality violations, a process known as “conformity.” Once the plan is withdrawn, EPA will issue a finding of “Failure to Submit a Plan” and the region will enter a conformity “freeze,” meaning the region will not be able to add new transportation projects to its plan until it can demonstrate conformity.

“We believe that we will be able to use the new EPA guidance to demonstrate conformity in the near future, to reduce the impact to our transportation plan,” said Mayor Schoaf. “The new factor will assist us in developing a plan that satisfies EPA and meets the requirements of the Clean Air Act. We are comfortable with ADEQ withdrawing the plan and a new plan being developed.”

For more detailed information regarding the plan’s withdrawal, visit the MAG website at www.azmag.gov.

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Withdrawal of the MAG Five Percent Plan for PM-10

- ❖ The Arizona Department of Environmental Quality (ADEQ) is voluntarily withdrawing a dust control plan in order to use new paved road dust factors provided by the Environmental Protection Agency (EPA) to improve the plan.
- ❖ The new dust factor is more accurate and addresses concerns that have prevented the plan's approval. The plan was facing a partial disapproval action by the EPA in late January.
- ❖ The move gives the region additional time to make changes to the MAG Five Percent Plan for PM-10, while at the same time incorporating the new dust factors provided to us by the EPA that will help improve the plan and address the technical concerns EPA had with the plan.
- ❖ The stringent measures contained in the plan will continue to be implemented and public health will not be affected by the plan's withdrawal. It is important to note that under this plan, we have had no violations of the coarse particulate standard at the monitors at all in 2010.
- ❖ Withdrawal of the plan will result in a "Finding of Failure to Submit a Plan" by the EPA, and the region is expected to enter a conformity freeze. Under a conformity freeze, only projects in the first four years of the five-year Transportation Improvement Program and Regional Transportation Plan can proceed, and no new projects can be added.
- ❖ The freeze is expected to be short-lived. The new formulas for paved road dust will help us meet air quality conformity requirements while a revised plan is being prepared. Once MAG demonstrates conformity, the freeze will end and the transportation program can proceed as usual.
- ❖ Withdrawal of the plan also gives EPA additional time to fix the many problems that exist with the agency's flawed "Exceptional Events Rule," which has been at the heart of the dispute with the EPA over the MAG plan. The Clean Air Act allows regions to be excused from penalties for exceptional events (*see additional background, next page*).
- ❖ The finding of "Failure to Submit a Plan" would also start two "sanctions clocks" (*see box, below*). The clocks will stop once the revised plan is submitted and the EPA determines that it is complete.
- ❖ This solution allows the region to improve the plan while providing the least harm to our region and our economy. Under a disapproval, the sanctions clocks would not stop until EPA approved a new plan, which could have been months after sanctions were imposed.

Sanctions Clocks



A finding of failure to submit a plan will start the sanctions clocks, with the first sanction (tighter controls on major industries) imposed within 18 months. Highway sanctions (loss of federal highway funding) would follow if a new plan is not submitted within 24 months. The clocks will stop when a new plan is submitted and the EPA determines it is complete. In addition, if EPA does not take final action to approve the plan within two years of the EPA finding of failure to submit, a federal implementation plan would be imposed.



Additional Background

- ❖ The plan was first submitted to the EPA in 2007 and outlined how the region would reduce coarse particulate matter 10 microns in diameter or less (PM-10) by five percent each year until the federal standards are met. The Plan contained 53 aggressive measures designed to reduce PM-10 emissions by five percent per year and attain the standard by 2010.
- ❖ When EPA did not take action on the plan under the timeline set forth in the Clean Air Act, a public interest group filed a lawsuit against the EPA. In settling the suit, EPA announced it would take action in January 2011, and that the action would include partial disapproval of the plan.
- ❖ A key factor in the disapproval was an EPA decision to deny a request by the Arizona Department of Environmental Quality (ADEQ) to treat four high wind exceedances of the PM-10 standard in 2008 at a monitor at West 43rd Avenue as due to exceptional events, despite evidence submitted by ADEQ and MAG that high winds were to blame. The decision meant that the region could not demonstrate attainment of the PM-10 standard by 2010 as shown in the plan. Because of failure to attain the standard, the EPA published a notice in September 2010 that disapproval of the plan would be forthcoming in January 2011.
- ❖ EPA cited several additional issues with the plan, primarily concerns regarding the accuracy of the 2005 emissions inventory used to develop the plan. The new dust factors recently issued by the EPA will help address the emissions inventory issues.
- ❖ The EPA has admitted that the Exceptional Events Rule is flawed, and many states are concerned about inconsistencies in how it is administered. The rule is being questioned not only by Arizona, but also by 14 other western states that must frequently contend with dust storms, wildfires and forest fires.
- ❖ If the issues with the rule are not resolved, our region will find itself in the same situation time and time again—there is no plan that can control high winds.
- ❖ In a recent executive order, President Obama, seeking to improve the regulatory process, stated that federal agencies must find the “least burdensome tools for regulatory ends,” and take into account benefits and costs. This Executive Order, which also requires federal agencies to review existing rules that may be “outmoded, ineffective, insufficient or excessively burdensome” may prove helpful as EPA continues its review of the Exceptional Events Rule.

MAG Commitment to Air Quality

MAG, Maricopa County, and ADEQ have an impressive record in improving the quality of our air. Below are just a few of the region's air quality achievements.

- The MAG region was one of the first areas in country to implement an alternative fuels program to help resolve the carbon monoxide issue.
- The region has one of the most stringent vehicle emissions inspection maintenance programs in the country.
- MAG is currently a cosponsor of a pilot project to implement electric vehicle charging stations in the region.
- The region has met the federal air quality standard for carbon monoxide. The nonattainment area is now a maintenance area.
- There have been no violations of the one-hour ozone standard since 1996. The region was also redesignated as a maintenance area for that pollutant. There have been no violations of the .08 parts per million eight-hour ozone standard since 2004.
- The region also meets the fine particulate standard (PM-2.5).
- In the area of PM-10, the MAG Revised 1999 Serious Area Plan contained 77 aggressive measures to reduce dust. This Plan was one of the first in the nation and was heralded by the EPA as one of the most comprehensive plans in the country.
- The PM-10 Plan submitted by MAG in 2007 contained another 53 aggressive measures that are in addition to the Serious Area Plan Measures. In fact, every city and town within the nonattainment area, and Maricopa County, have implemented dust control measures to address dust pollution. A tracking report indicates the cities and towns have gone above and beyond their commitments.
- In addition, the MAG Regional Council has allocated a total of \$23.2 million in CMAQ funds over the last 10 years to purchase clean, dust-reducing street sweepers. It has allocated \$28.4 million for paving unpaved roads from fiscal 2007 to 2013.
- Since the MAG Five Percent Plan was submitted in 2007, there have been no exceedances at monitors during stagnant conditions. There have been no exceedances of the standard at any monitor in 2010.